United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
NO. 74-2670

74-2670

B/S

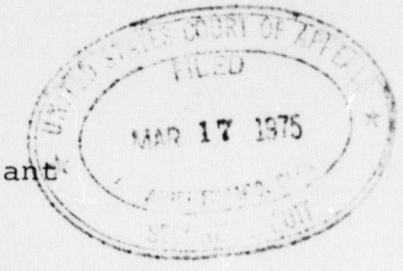
HESTER MAGGETT, ET ALS

Plaintiff-Appellees

against

NICHOLAS NORTON

Defendant-Appellant



On Appeal from the United States District Court
for the District of Connecticut

BRIEF FOR PLAINTIFF-APPELLEES

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ISSUE PRESENTED

At issue is whether the Welfare Department has applied a minimal standard of assurance that notices of face-to-face interviews have in fact been received by welfare recipients for whom such notices were intended before these recipients had their benefits terminated on "failure to appear" grounds.

SUMMARY OF THE ARGUMENT

Once a person has been found to qualify for welfare benefits his right to continue to receive such benefits must be protected against arbitrary or unfair governmental action. The Welfare Department's first three months of operating under its new face-to-face interview policy saw a substantial number of recipients erroneously terminated on the basis of an administrative presumption by the Appellant-Defendant that Appellee-Recipients actually received the notice to appear at the initial redetermination interview and their failure to so appear in answer to the summons constituted an affirmative and knowing waiver of their claim to continued eligibility for AFDC benefits. The protected rights of these recipients can be adequately safeguarded only if the Welfare Department is required to make a specific finding based on a reliable procedure that notice of face-to-face interview has in fact been given the recipient.

STATEMENT OF FACTS

On or about June 1, 1974, the Defendant Welfare Commissioner began a redetermination of the eligibility of AFDC recipients in the State of Connecticut. Within the first three months 50% or approximately 17,000 AFDC recipients were to be seen in face-to-face interviews. The remaining 50% of the statewide caseload were to be seen in the next following three weeks. In all, 35,000 AFDC recipients in Connecticut were to be seen in face-to-face interviews to be held in the Defendant's district offices.

Pursuant to the redetermination project, the Defendant authorized the mailing of notices to the aforesaid AFDC recipients advising them that they must submit to a redetermination interview on a specified date or have their benefits discontinued. These notices were sent by regular mail. The Defendant presumed receipt when the notice was not returned by the post office.

Until the aforesaid face-to-face interview requirement went into effect the Defendant had for two years conducted its redetermination interviews by phone calls initiated by the Defendant.

Recipients neither expected nor were they looking for this vital but undistinguished piece of mail.

Under the prescribed procedures a Notice of Intent to Discontinue award goes out to the recipient on the date the recipient was to have appeared for this interview. That notice advised the recipient of his right to ask for a hearing on the Department's proposed discontinuance action and states that the request must be made no later than 10 days of the date of the notice. The W-52T action of discontinuance issues forth on the eleventh day.

Appellee-Recipient Hill did not receive the initial notice advising her of a face-to-face interview date of August 7, 1974. Instead, she received a Form W-848 dated August 7, 1974, advising her that her award was being discontinued effective August 31, 1974, because "you have failed to appear for redetermination when scheduled on August 7, 1974", and telling her the request for an evidentiary hearing had to be received in the District Office of the Appellant no later than August 17, 1974. It should be noted at this point that August 17th was a Saturday. On August 19, 1974, the following Monday, a Notice of Discontinuance dated August 19, 1974, was put through reaching the Appellee-Recipient by mail later that week.

Appellee-Recipient Maxwell had her AFDC benefits terminated on September 15, 1974. She had received no notice of her scheduled face-to-face interview nor had she received the W-848. She received only the W-52T dated August 26, 1974, advising her that her assistance would be discontinued on September 15, 1974. In spite of the fact that Appellee-Recipient Maxwell appeared at the District Office with the W-52T in hand as soon as she received it explaining she had received no previous communications, she was told to come back to reapply for assistance on September 19, 1974.

Finally there is the situation of Appellee-Recipient Maggett who received no communications at all. On August 1, 1974, she simply received no check. Upon calling Appellant's District Office on August 1, 1974, she was told to wait two or three days before reporting her check lost. On August 5, 1974, Appellee-Recipient Maggett went to Appellant's District Office at 2550 Main Street and was told to return the following day whereupon she learned that her assistance had been terminated because she had failed to appear for her face-to-face interview and had not thereafter asked for an evidentiary hearing. In response, Appellee-Recipient Maggett advised Appellant she had received no notice advising her of the interview date, that she had not received the W-848 hearing form nor the W-52T Discontinuance

Notice. In spite of this, Appellee-Recipient Maggett was required to apply anew for her AFDC benefits and to wait until September 16, 1974 for her first payment.

Five additional affidavits were presented to the Court, each of which attest to similar notice omissions by the Appellant.

I

APPELLEES, AND THE CLASS THEY REPRESENT, HAVE SUFFERED AND CONTINUE TO SUFFER GRIEVOUS AND IRREPARABLE INJURY AS A RESULT OF APPELLANT'S UNLAWFUL DISCONTINUANCE AND THREATENED DISCONTINUANCE OF THEIR MEANS OF SUBSISTENCE AND LIVELIHOOD.

Appellant has taken the posture that even if appellees, and the class they represent, have been wrongfully deprived of statutorily-mandated AFDC benefits, they have not suffered, and will not suffer, grievous or irreparable injury. He has advanced the following four arguments in support of this contention:

A. Any AFDC recipient who is wrongfully discontinued from State public assistance becomes immediately eligible for town general assistance, which provides the same level of benefits. See Brief of Appellant, Page 5, Paragraphs 16 and 17. In the instant case, the 77 or 80 AFDC recipients and their families who contacted the Hartford Department of Social Services all received some assistance within three days of their application. Brief of Appellant, Page 16.

B. There was not one "scintilla" of evidence during the two days of hearings before the trial Court to support the contention that

appellees, or the class they represent, required any emergency aid as a result of their discontinuance from the AFDC rolls. At most, the appellees suffered an "inconvenience". Brief of Appellant, Pages 15-16.

C. The Hartford Department of Social Services uses first class mail to notify recipients of town general assistance to appear for redetermination of eligibility interviews. The Supreme Court of the United States did not hold in Goldberg v. Kelly that a first class mailed letter constituted insufficient notice. Brief of Appellant, Page 6, Paragraph 24 and Page 17. The appellees may not then be aggrieved by the use of this method of notice.

D. Goldberg v. Kelly holds that safeguards to protect recipients of public assistance may be minimal where the State has an interest in the speedy resolution of eligibility matters. Brief of Appellant, Page 17. The State's interest in discontinuing aid to ineligibles, thus, outweighs the interest of providing adequate safeguards to those people who are eligible for public assistance.

A. THE EXISTENCE OF TOWN GENERAL ASSISTANCE DOES NOT PREVENT THE APPELLEES, AND THE CLASS THEY REPRESENT, FROM SUFFERING GRIEVOUS AND IRREPARABLE INJURY.

Appellant's argument that the availability of town general assistance acts as a sort of quid pro quo for wrongful termination of AFDC benefits is based on three tenuous assumptions: (1) that an AFDC recipient has actual knowledge of his or her discontinuance of benefits and immediately applies for town general assistance; (2) that the town general assistance agency has the ability and capacity to provide immediate assistance; and (3) that the town general assistance agency may provide immediate assistance without a disruption which might affect its other clients and responsibilities. Since the appellant alleged the availability and adequacy of town general assistance in his Answer, as the Fourth Special Defense, the burden of proving all of the above assumptions rested on him. The testimony during the two days of hearing before the trial court, however, demonstrated the illogic and inaccuracy of the Fourth Special Defense.

One of appellees' expert witnesses, Henry Ora, Deputy Director of the Hartford Department of Social Services, testified that it "could take anywhere from one day to two weeks" before an AFDC family contacts his department after failing to receive an AFDC check. Appendix to Brief of Appellant, Pages 42a-43a. This testimony was substantiated by Nancy Fleming, the

Director of Case Work of the Hartford Department of Social Services and an employee of the Department for 17 years. Appendix to Brief of Appellant, Pages 48a-49a. There was no testimony by appellant's witnesses to contradict this claim.

The explanation for this delay is that it usually takes at least a few days before the AFDC recipient can determine whether his or her State check is forthcoming. Appendix to Brief of Appellant, Pages 42a, 49a. Occasionally, a check may be delayed for a few days due to a late mailing or a postal disruption. Appellant's assumption that an AFDC recipient, whose benefits have been terminated, will immediately contact the local welfare agency, is, therefore, without merit.

Furthermore, Deputy Director Henry Ora testified on September 26, 1974, that AFDC recipients who have had their benefits discontinued pursuant to the appellant's redetermination policy were still contacting his Department. Appendix to Brief of Appellant, Page 42a. The date of this testimony occurred weeks after the State Department of Welfare had completed the mailing of notices to AFDC recipients who reside within the City of Hartford. Appendix to Brief of Appellant, Pages 35a-36a.

The appellant also stipulated that the town welfare departments, including the Hartford Department, never received any official notice

of the new redetermination program, and that this lack of notice put a burden on the Hartford Department in meeting the needs of the AFDC recipients who had their State benefits terminated. Appendix to Brief of Appellant, Page 22a, Stipulation of Facts 2 and 3. Although the Hartford Department was able to provide the 80 terminated AFDC families with some assistance within three days of contact, many caseworkers had to be diverted to meet their needs. These needs not only included monetary aid, but also assistance in reapplying for State AFDC benefits. The number of pending applications for AFDC benefits during the month of September alone was 494, more than twice the monthly average. Appendix to Brief of Appellant, Page 48a. Obviously, such emergency assistance diverts substantial manpower from meeting the needs of those families who are properly receiving town general assistance.

B. APPELLEES PRESENTED EVIDENCE THAT AFDC RECIPIENTS WHO HAD THEIR BENEFITS TERMINATED WERE DESTITUTE AND IN DIRE NEED OF EMERGENCY ASSISTANCE.

An important factor to consider is that when 80 cases of AFDC recipients are terminated, more than 80 individuals are deprived of benefits. The AFDC program provides aid primarily to children. All of

the named plaintiffs in this appeal would never have received benefits under the AFDC program unless they were the legal custodian of children with no means of support. When the benefits of AFDC parents are terminated because they fail to show up for an interview, their children's benefits are also terminated.

Deputy Director Henry Ora's uncontradicted testimony was that the family size for the average AFDC recipient was approximately four. The 80 terminated AFDC families which had contacted the Hartford Department of Social Services by September 26, 1974, included approximately 300 individuals. Appendix to Brief of Appellant, Page 42a. Since the State Department of Welfare does not currently provide assistance to more than one parent under the AFDC program, the majority of these 300 individuals were children.

Appellees' expert witnesses from the Hartford Department of Social Services testified that the terminated AFDC families which had thus far contacted their agency were without funds, food stamps and medical cards. Appendix to Brief of Appellant, Pages 42a, 49a. These individuals are living at a subsistence level, which was defined as "the minimum that an individual could survive on." Appendix to Brief of Appellant, Pages 47a, 48a. Once the subsistence benefits a family depends on are

terminated for even a few days, the impact on that family is "detrimental". Appendix to Brief of Appellant, Page 49a.

The United States Supreme Court has cited with approval one district court's characterization of the "destitute" condition of a welfare recipient without funds or assets:

> "Suffice is to say that to cut off a welfare recipient in the face of...'brutal need' without a prior hearing of some sort is unconscionable..." Goldberg v. Kelly, 397 US 254, 261, 90 S. Ct. 1011, 25 L. Ed 2d 287. (Emphasis Added)

It does not take a month or a week for this "brutal need" to arise. Once a recipient of public assistance has his benefits terminated "...his situation becomes immediately desperate." Goldberg v. Kelly, supra, 297. A reaffirmation of this fact recently occurred in Connecticut, when State welfare checks were mailed late, resulting in a three day delay of receipt. The Deputy Mayor of the City of Hartford, Dr. Allyn A. Martin, described this situation as an "emergency". Governor Ella Grasso stated that the delay "resulted in hardship and deprivation", and ordered a review of the State Welfare Department's check-mailing procedures so that there would be no repeat of this situation. Finally, the appellant's successor in office, Welfare Commissioner Edward W. Maher, responded to

this crisis by saying: "I don't want any repeats of this weekend." See Articles attached to this Brief as Appendix A.

In light of the above uncontradicted evidence, appellant's contention that the one to 20 day delay in contacting the local welfare agency, and the one to three day delay in being serviced, constitutes nothing more than an "inconvenience" to an AFDC family demonstrates a callous disregard for the health, safety and welfare of the 35,000 families which depend on the AFDC program for their sole subsistence and livelihood.

Appellant, however, has admitted in his Brief that many of the AFDC families that contacted the Hartford Department of Social Services had suffered grievous and irreparable injury. During the examination and cross-examination of Deputy Director Henry Ora, it was revealed that those AFDC families which couldn't be immediately serviced by his Department were sent to the Salvation Army "(I)f the recipient was in dire need of food..." Brief of Appellant, Page 5, Paragraph 21. See Appendix to Brief of Appellant, Pages 36a, 43a. Mr. Ora's use of the term "dire need", which was adopted in appellant's Statement of the Case, certainly indicates more than an inconvenience. The term connotes an "urgent", "extreme" or "desperate" situation. Webster's Third New International Dictionary.

Appellees, and the class they represent, endorse appellant's admission that many of the AFDC families who had their benefits wrongfully terminated were in a desperate state by the time they contacted the Hartford Department of Social Services, the largest local welfare agency in the State of Connecticut. The emergency aid provided by the Salvation Army, however, was inadequate to meet this "dire need". The Salvation Army provides no rent, utility or clothing assistance. An individual will only receive a $5.00 to $10.00 food voucher, depending on his or her family size. Such emergency assistance consists of little more than a holding action to prevent far more dreadful consequences. Appellees contend that these "...needless hardship burdens on the individuals affected..." moved the trial court to grant the requested injunctive relief. Ruling on Petition for Injunctive Relief, Appendix to Brief of Appellant, Page 15a.

C. FIRST CLASS MAIL NOTIFYING AFDC RECIPIENTS OF REDETERMINATION INTERVIEWS DOES NOT CONSTITUTE ADEQUATE AND MEANINGFUL NOTICE.

Assuming, arguendo. that the Hartford Department of Social Services uses first class mail as a method to notify recipients of town general assistance of pending terminations, this has no bearing on the instant controversy. Appellees, and the class they represent, are not aggrieved

by the Hartford Department, but by the actions of the appellant. If any class of individuals becomes aggrieved by the notice procedures adopted by the Hartford Department, such a controversy will become the subject of another suit. The testimony of the expert witnesses of the Hartford Department of Social Services, however, testified that there is little similarity between their termination procedures and those of the appellant.

The Hartford Department of Social Services makes an effort to obtain personal contact with a general assistance recipient when that recipient does not respond to his or her first class mail notification. Appendix to Brief of Appellant, Page 44a. The State Department of Welfare makes no such effort at personal contact when an AFDC recipient does not respond to his redetermination interview notice. Appendix to Brief of Appellant, Page 50a. The Hartford Department of Social Services also insures that its clients have regular contact with their caseworkers. Appendix to Brief of Appellant, Page 44a. When appellees' expert witness, Nancy Fleming, was asked whether first class mail was a satisfactory method of notifying recipients of public or general assistance of interviews, she responded in the negative. First class mail should only be used as a

first step. Appendix to Brief of Appellant, Page 49a.

The appellant asserts, however, that the Supreme Court's decision of Goldberg v. Kelly, supra, does not suggest that first class mail is an inadequate method of notice. He points to the "strong presumption" that has been judicially recognized in Connecticut that a properly mailed first class letter is "...received and read by the person to whom it was addressed." Brief of Appellant, Page 11.

The appellant does not deny that he has the burden of providing "...timely and adequate notice detailing the reasons for a proposed termination..." Goldberg v. Kelly, supra, 299. Nor is there any denial that the "...extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss'..." Goldberg v. Kelly, supra, 296. See Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 168, 71 S. Ct. 624, 95 L. Ed 817, 852 (Frankfurter, J., concurring); Dohany v. Rogers, 281 U.S. 362, 369, 50 S. Ct. 299, 74 L. Ed 904. The central issue before the trial court was whether the following administrative presumption by the State Welfare Department comported with due process of law:

> "...that the plaintiff-AFDC recipient actually received the notice to appear at the initial redetermination interview and

> their failure to so appear in answer to the summons constituted an affirmative and knowing waiver of their claim to continued eligibility for AFDC benefits."
> Ruling on Petition for Injunctive Relief, Appendix to Brief of Appellant, Page 14a.

Noting the "...high percentage of erroneous terminations..." which resulted from the above presumption, the trial court concluded that such a presumption could not be sustained. Ruling on Petition for Injunctive Relief, Appendix to Brief of Appellant, Page 15a.

The "strong presumption" which the appellant asserts attaches to a properly mailed letter has been described by the United States Supreme Court as nothing more than a "mere inference of fact":

> "The rule is well settled that if a letter properly directed is proved to have been either put into the post office or delivered to the postman, it is presumed, from the known course of business in the post office department, that it reached its destination at the regular time, and was received by the person to whom it was addressed. (Cases cited deleted). As was said by Gray, J. in the case last cited, 'the presumption so arising is not a conclusive presumption of law, but a mere inference of fact founded on the probability that the officers of the government will do their duty and the usual course of business, and when it is opposed by evidence that the letters never were received, must be weighed with all the

> other circumstances of the case, by the jury in determining the question whether the letters were actually received or not.' " Rosenthal v. Walker, 111 U.S. 185, 193-4, 4 S. Ct. 382; 28 L. Ed 395.
> (Emphasis Added)

The existence of even "a mere inference of fact" concerning the receipt of a properly mailed letter has been denied by several decisions: Demers v. Brisbee, 106 N.H. 354, 211 A. 2d 416; McSparran v. Insurance Co., 193 Pa. 184, 191; Groton v. Lancaster, 16 Mass. 110. Some courts which have adopted the "strong presumption" referred to by appellant have categorized it as "...of the weakest character..." Teitelbaum v. Board of Revision of Taxes, 65 Pa. Dist. & Co. 619, 628.

> "The presumption is ordinarily indulged in only in the absence of evidence to the contrary. Furthermore, the presumption of receipt of a letter duly mailed will not apply where the law requires actual delivery of a letter or, according to some decisions, where the person addressed has no opportunity to deny the receipt of a letter claimed to have been mailed to him." 29 Am. Jur. 2d Evidence, Section 194.

Connecticut has followed the decisions of federal and state courts holding that the presumption of receipt is a rebuttable question of fact which must be adhered to only "...where there is no evidence to the

contrary..." Pitts v. Hartford Life & Annuity Ins. Co., 66 Conn. 376, 384. Some decisions have held that the presumption is totally overcome by testimony of the addressee that he never received the letter. Employers' Liability Assur. Corp. v. Maes, 235 F. 2d 918 (C.A.-10); Conklin v. Shaw, 67 Colo. 169, 178, 185 P. 661. The majority rule, however, is:

> "that a denial of receipt of such a letter raises an issue of fact to be determined by the jury." Hartford Fire Insurance Company v. Mutual Savings and Loan Company, Inc. & C., 193 Va. 269, 273, 68 SE 2d 541. See Wigmore on Evidence, 3d Ed., Section 2491, Par. 2; O'Brien v. Equitable Life Assurance Co. of United States, 212 F. 2d 383 (C.A.-8), certiorari denied 348 U.S. 835, 75 S. Ct. 57, 99 L. Ed. 658; Crude Oil Corp. of America v. Commission of Internal Revenue, 161 F. 2d 809 (C.A.-10); Simpson v. Jefferson Standard Life Insurance Company, 465 F. 2d 1320, 1323 (C.A. -6); Watkins v. Prudential Ins. Co., 315 Pa. 497, 173 A. 644.

In the present appeal, all of the named plaintiffs testified under oath that they did not receive the interview notices allegedly mailed by the State Welfare Department. Appendix to Brief of Appellant, Pages 45a-47a. The defendant's expert witness, Theresa B. Connell, insisted that the named plaintiffs did receive the notices because

"(O)ur system indicates that they did receive it." Appendix to Brief of Appellant, Page 55a. "Our system" refers to the State Welfare Department's computerized address system. The fact that the mailed notices were never returned by the Post Office was, in the opinion of Ms. Connell, conclusive evidence that they were received.

The many decisions cited by appellees refute the presumption of law which Ms. Connell accords to "our system". Furthermore, her "oral" evidence does not conclusively establish that the letters of notice were properly addressed or mailed. Paul v. Dwyer, 419 Pa. 229, 232, 188 A. 2d 753. There is no presumption that a letter is, in fact, properly addressed or mailed. McGonigle v. Prudential Ins. Co. of America, 100 Mont. 203, 46 P 2d 687, 693. The presumption of receipt does not even arise until there is proof that a letter was properly addressed and mailed. Rosenthal v. Walker, supra, 193; Pitts v. Hartford Life & Annuity Ins. Co., supra, 384.

The defendant's computerized address system was outdated by approximately two months. Appendix to Brief of Appellant, Page 44a. The computer list may not have had the most current addresses. This is particularly true in the case of low-income individuals, who have a high rate of mobility and are often extremely difficult to locate after

they have moved. Appendix to Brief of Appellant, Page 23a, Stipulation of Facts 9, 10.

Appellees respectfully submit that the rebuttable judicial presumption of the receipt of a properly mailed letter does not apply in the instant controversy for one additional reason. AFDC recipients who do not receive the letters of notice of interview or threatened termination of benefits have no opportunity to deny the receipt of these letters until after they have been discontinued from the AFDC program. The only state or federal decision, to our knowledge, which resolved an analogous situation held as follows:

> "We are aware of the general rule that when it is shown that a letter or notice was put in an envelope and that it was properly addressed, stamped, and mailed, the presumption is that the addressee received it in the usual course of mail, yet, this is merely a rule of presumption, and is indulged in cases where the addressee would have an opportunity of denying the truth of the fact presumed if the presumption were not correct. In such case his failure to deny that he received the letter is conclusive of the correctness of the presumption. Here no such opportunity is afforded the addressee. Unless he did receive the letter, he would probably never hear of the proceeding until the matter was acted on in this court. The proof is not sufficient that

> he did receive it. The case would be different if the letter had been registered to him and a return receipt to be signed by him on delivery had been demanded, obtained, and introduced in evidence, together with proof of his signature and of the contents of the notice registered." Cleghorn v. The State, 8 Ala. App. 272, 276, 62 So. 329.
>
> (Emphasis Added)

In the instant controversy, the appellees, and the class they represent, never had the opportunity to rebut the weak presumption of receipt until this action was instituted. The finding by the trial court, that "...the recipient's initial failure to appear for the interview..." raises "a question as to the actual receipt of notice", rebuts this tenous presumption. Appendix to Brief of Appellant, Ruling on Petition for Injunctive Relief, Page 17a. The fact that "...approximately 20 to 25% of the persons discontinued as a result of this redetermination program, immediately reapplied for the same discontinued benefits..." should have alerted the appellant to the inadequacy and inapplicability of his presumption. Appendix to Brief of Appellant, Ruling on Petition for Injunctive Relief, Page 16a. The substantial increase in reapplications for AFDC benefits should have at least raised some question about the effectiveness of first class mail as a method of notice. See Appendix

to Brief of Appellant, Page 48a.

The Supreme Court in Goldberg v. Kelly, supra, did not resolve the question of what constituted adequate and meaningful notice. It is interesting to note, however, that in Goldberg v. Kelly, the rules promulgated by the New York City Department of Social Service required that a "...caseworker who has doubts about the recipient's continued eligibility must first discuss them with the recipient." Goldberg v. Kelly, supra, 294. (Emphasis Added) No similar procedure has been prescribed by the Connecticut Welfare Department.

Under these circumstances, the trial court was correct in both law and fact when it held that:

> "...reliance on the same mode of notification to inform the recipient of the final termination evidentiary hearing fails to provide the basic procedural safeguards which must circumscribe any action so vital to the family's health and welfare as the termination of welfare benefits." Appendix to Brief of Appellant, Ruling on Petition for Injunctive Relief, Page 17a.

D. APPELLANT'S DESIRE TO PROTECT THE PUBLIC TAX REVENUES DOES NOT OUTWEIGH THE AFDC RECIPIENT'S INTEREST IN RECEIVING ADEQUATE AND MEANINGFUL NOTICE OF REDETERMINATION INTERVIEWS.

Appellant has asserted that the United States Supreme Court in

Goldberg v. Kelly "...recognized that safeguards in cases, where the welfare department has an interest in speedy resolution of eligibility matters, may be minimal." Brief of Appellant, Page 17. The inference from this statement is that the appellant, therefore, does not have to provide adequate safeguards regarding notice of proposed interviews and terminations of benefits. Such an inference is spurious.

The possibility that an ineligible AFDC recipient might get an extra welfare check to which he or she is not entitled does not justify indiscriminate termination of benefits to those who are eligible:

> " 'Against the justified desire to protect public funds must be weighed the individual's overpowering need in this unique situation not to be wrongfully deprived of assistance... While the problem of additional expense must be kept in mind, it does not justify denying a hearing meeting the ordinary standards of due process.' " Goldberg v. Kelly, supra, 295.

A "fundamental requirement of due process of law" is timely and adequate notice. Goldberg v. Kelly, supra, 299. Without such notice, the opportunity to be heard becomes a hollow right.

Appellees, and the class they represent, join the appellant in his desire to terminate benefits to ineligibles. Such ineligibles make it

more difficult for the truly needy to receive assistance. In addition, they give public assistance a bad name. Any termination procedure which does not provide adequate notice, however, will be more cosmetic and detrimental than meaningful. Appellant's termination policy is a case in point.

The appellant points with pride to the fact that under his new termination policy, the number of terminations per month has increased from 783 AFDC cases to 1,024 AFDC cases. Brief of Appellant, Pages 4-5, Paragraphs 14 and 15. This increase, however, is offset by the fact that 20 to 25% of those AFDC families which had their assistance discontinued as a result of the redetermination process reapplied for the same benefits, according to the appellant's own expert witness. Appendix to Brief of Appellant, Page 31a.

The injury which such a system imposes is not confined to the AFDC recipients alone. There is a severe strain on the administrative resources of both local and State welfare agencies in providing emergency assistance and processing reapplications. See Appendix to Brief of Appellant, Ruling on Petition for Injunctive Relief, Page 15a. The State Welfare Department also loses thousands of dollars of federal reimbursements when it discontinues eligible AFDC cases. AFDC benefits

provided by the State are reimbursed by the federal government at a rate of 50%. The 90% reimbursement which the State provides to local welfare agencies for town general assistance does not consist of any federal funds.

It is clear, therefore, that the appellant's redetermination policy not only aggrieves the appellees, and the class they represent, but also imposes a severe administrative and financial burden on State and local welfare agencies.

II

THE TESTIMONY OF APPELLANT'S MAJOR WITNESS, THERESA BRANNELLY CONNELL, LACKS CREDIBILITY WITH RESPECT TO THE INFALLIBILITY OF "THE SYSTEM" USED FOR REDETERMINATION OF AFDC ELIGIBILITY.

During the two days of examination and cross-examination of appellant's major witness, Theresa Brannelly Connell, it became apparent that she had a vested interest in the redetermination system which she helped to formulate. At times she exalted "the system" to the status of a God-like fiat, as demonstrated by the following exchange during cross-examination:

> "Q. Do you have any idea of how many of the 1,448 (AFDC recipients), who did not have an interview, actually received notice?
>
> A. I know that all received initial notice of interview.
>
> Q. All?
>
> A. By the system that I explained yesterday.
>
> Q. ...Including the two witnesses that you (heard) yesterday, who testified that they didn't?
>
> A. Right.

Q. They received it?

A. Our system indicates that they did receive it.

Q. Your system?

A. Yes, it does. By name and number. The mailing, the accounting for it every day. It was not returned by the Post Office in three instances."

Appendix to Brief of Appellant, Page 55a. (Parentheses Added)

"The system" could do no wrong. It did not matter that 20 to 25% of the families who had their AFDC benefits terminated by "the system" immediately reapplied for aid. The appellant was apparently unmoved by the fact that many families, consisting of thousands of children, never responded to the computerized first class mail mandated by "the system". If a first class letter of interview was returned as undeliverable by the post office, the response was to put it back in the mailbox. If an AFDC recipient failed to show up for an interview, the response was another first class letter. Appendix to Brief of Appellant, Page 30a. The idea of picking up a telephone or sending out a case-worker was inconsistent with "the system".

The inhumanity of "the system" was further demonstrated by the role

which town general assistance was designated to play. This role was as a dumping ground for AFDC cases which were wrongfully terminated, as set forth by the examination of Ms. Connell:

> "Q. Is one of the purposes of General Assistance to give the same scope of welfare benefits the State would give if the person for any reason whatsoever is discontinued from ADC and has to reapply?
>
> A. Yes."
>
> Appendix to Brief of Appellant, Page 35a.

The purpose of town general assistance is set forth in Section 17-273 of the Connecticut General Statutes. That purpose is to aid indigent people who do not have any legally liable relatives. There is no express or implied intent in Section 17-273 that town general assistance be used to facilitate a State redetermination of eligibility for public assistance. Of course, town welfare agencies will assist a family which has been wrongfully deprived of its subsistence benefits. Such an occurrence, however, should be rare.

Unquestionably, a redetermination system which operated by automatically discontinuing AFDC benefits to all recipients, thereby compelling them to reapply for assistance, would violate due process of law and shock moral sensibilities. Yet, for 20 to 25% of the

families who were axed by "the system", the above scenario was a reality. And to make the reality even more stark, the State Welfare Department never officially notified any town welfare department of its redetermination policy to enable these agencies of last resort to prepare properly for an influx of destitute children and custodians. Appendix to Brief of Appellant, Page 22a, Stipulation of Facts 2 and 3.

A redetermination policy should not be designed solely to increase the monthly termination rate. Its purpose and effect should be to discontinue benefits to ineligibles. Here, one out of every four families who had their AFDC benefits terminated immediately reapplied for the same benefits once they contacted their local welfare agencies for emergency assistance. In the face of such overwhelming figures, however, Ms. Connell testified that of the 1,448 families, which never submitted to an interview and had their AFDC benefits terminated, only 30 did not telephone the State Welfare Department or walk in and state that they no longer needed their benefits. Appendix to Brief of Appellant, Pages 31a-32a, 41a, 51a and 53a. At least this is what she testified to on the first day of the hearing before the trial court.

On the morning of the second day of the hearings, Ms. Connell came to Court with an entirely new set of termination figures "(B)ecause I

think yesterday my arithmetic and my understanding of what you were asking was wrong." Appendix to Brief of Appellant, Page 54a. These new figures now appear in Stipulation of Facts 7 and 8. Appendix to Brief of Appellant, Page 23a. Ms. Connell's testimony concerning the 30 ultimate "no-shows" also changed on September 27, 1974, during the following two exchanges with the Court:

> "THE COURT: What I was interested in, getting back to your testimony yesterday, you ended by stating that ultimately only 30 did not turn up to appear at the office.
>
> Would you recapitulate that, in light of your new figures today, to see how they compare, so that there will be no confusion about different figures on different dates?
>
> THE WITNESS: Right. The 31 figure was the manual count that I testified to this morning, which was not a regular count. It was a clerical kind of thing."
>
> Appendix to Brief of Appellant, Page 56a.
> (Emphasis Added)
>
> "THE COURT: ...How many were affected by discontinuance simply because they didn't respond to your notice?
>
> THE WITNESS: I don't have exact information, your Honor...
>
> THE COURT: How did you get down to this

30 figure that you gave yesterday?

THE WITNESS: From a clerical count, you know... And it really isn't an accurate kind of thing."

Appendix to Brief of Appellant, Pages 58a-59a. (Emphasis Added)

Furthermore, Ms. Connell testified that she personally received no telephone calls from any AFDC recipient who requested a termination of his or her family's benefits. Appendix to Brief of Appellant, Page 55a. Of the 1,940 AFDC cases which were discontinued, Ms. Connell could only produce 492 written statements waiving AFDC benefits; the same 492 recipients who showed up for a redetermination interview. Appendix to Brief of Appellant, Page 54a. She could not produce one written statement by any recipient, who did not have an interview, who walked into a State welfare office, or telephoned, to request that his or her AFDC benefits be terminated.

Ms. Connell assigned the fault for a high percentage of wrongful terminations on the AFDC recipients. She testified that a number of recipients would never submit to a redetermination interview "...until the check didn't get to them." Appendix to Brief of Appellant, Pages 40-41a. Assuming, contrary to the evidence, that the AFDC adult

custodian, and not "the system", was to blame, what does this mean to a hungry child? It means that he or she is once more a victim of a system that does not take into account human shortcomings.

The comprehensive Order of the Court, appearing on Pages 18a-20a of the Appendix to Brief of Appellant, takes into consideration factors which are necessary to satisfy minimal notice requirements. If a recipient cannot be reached by mail, or personal contact, then a "hold" action on their monthly check is instituted. This system insures that ineligibles will not get an extra check and eligibles will be provided with adequate notice and subsistence benefits.

CONCLUSION

If the Court still has any doubts concerning the equity or wisdom of the decision of the trial court after reviewing the record of these proceedings, appellees pray that the Court will resolve these doubts in accordance with the following principles as set forth by the United States Supreme Court.

A. "Since our system is an adversary one, a petitioner carries the burden of convincing the appellate court that the hearing before the lower court was either inadequate or that the legal conclusions from the facts deduced were erroneous." Gardner v. California, 393 U.S. 367, 370, 89 S. Ct. 580, 21 L. Ed. 2d 601.

On appeal, the appellant must meet this burden "clearly and satisfactorily". Townsend v. Jemison, 48 U.S. 706, 724, 7 How. 706, 12 L. Ed. 880. Such a burden consists of more than merely raising some doubts or questions about the trial court's decision. Appellant must demonstrate that the trial court's findings are "clearly erroneous". Timken Co. v. United States, 341 U.S. 593, 597, 71 S. Ct. 971, 95 L. Ed. 1199. See Federal Rules of Civil Procedure, 52(a). The Supreme Court has held that "...only such errors as are plainly made to appear can be grounds of reversal..." Loring v. Frue, 104 U.S. 223, 224, 26 L. Ed. 713.

B. "In a court of error every presumption is in favor of the validity of the judgment brought under consideration." Boley v. Griswold, 87 U.S. 486, 488, 20 Wall. 486, 22 L. Ed. 375.

Logic dictates that every reasonable intendment should be made in favor of a judgment rendered by a trial court. The presiding judge of the trial court has often sat through days of hearings. He or she has heard all the testimony and weighed all the evidence, and is in the best position to judge the demeanor and credibility of the witnesses. The trial court judge's decision should, therefore, be accorded great weight.

C. "In shaping equity decrees, the trial court is vested with broad discretionary power; appellate review is correspondingly narrow." Lemon v. Kurtzman, 411 U.S. 192, 200, 93 S. Ct. 1463, 30 L. Ed. 2d 151. (Separate opinion of Burger, Ch. J.)

Only where there is a clear case of "abuse of discretion" will the trial court's equitable balancing of competing claims be set aside by an appellate court. Locomotive Engineers v. M.K.T.R. Co., 363 U.S. 528, 535, 80 S. Ct. 1326, 4 L. Ed. 2d 1379.

Appellees contend that appellant has failed to demonstrate that the trial court's decision was clearly erroneous. He has not proven that

the Court's injunctive relief has caused him grievous or irreparable damage. The appellees, however, have demonstrated that the Court's injunctive relief is necessary for their health, safety and welfare. Without the protection of the Court's Order, their life sustaining and statutorily-mandated benefits will be continuously threatened due to arbitrary action on the part of the appellant. Appellees, and the class they represent, believe that the trial court's injunctive relief will result in a meaningful redetermination program that will only terminate the AFDC benefits received by ineligibles. This is exactly what the appellees and the appellant desire to achieve.

Respectfully submitted,

Mary R. Hennessey

Barry S. Zitser

Attorneys for the Appellees

CERTIFICATION

I hereby certify that on the 14th day of March, 1975, I mailed a copy hereof to Carl R. Ajello, Attorney General, 30 Trinity Street, Hartford, Connecticut 06103 and Francis J. MacGregor, Assistant Attorney General, 90 Brainard Road, Hartford, Connecticut 06114.

Mary R. Hennessey
Attorney for Plaintiff-Appellees

APPENDIX A

HARTFORD, CONN., SUNDAY MORNING, FEBRUARY 16, 1975

Welfare Checks Mailed Late; Thousands in State Affected

By
WILLIAM COCKERHAM

State welfare checks were not mailed in time to be received by welfare recipients Saturday, and many said they don't know what they will do until the next mail, Tuesday.

Thousands of welfare dependents throughout the state were affected.

Deputy Mayor Allyn A. Martin said he considers the situation in Hartford an "emergency" and would attempt to get city welfare officials to provide needy families with credit at food stores.

"I've had six calls today (Saturday) from people who just don't know what they will do until Tuesday," Martin said.

State Welfare Department employes worked overtime Saturday to get the checks out, but they won't get to recipients until Tuesday because mail will not be delivered on George Washington's Birthday, Monday.

Martin said the delay in sending out the checks will cause a "terrible strain" on some families, which had depended on the money to make their weekly food purchases Saturday.

"I have to regard this as an emergency situation," he said. "I'm certain some families just won't be able to make it through the long weekend without some help."

State welfare checks normally are received by mail on the first and 15th day of the month, and Martin said most families and individuals "stretch" the money to last from one check to the next.

Martin said he made several calls to welfare officials Saturday but, "No one is able to provide an answer as to why the checks were late."

"If they were able to pull in people for overtime Saturday why couldn't they have done it earlier in the week?" he said.

THE HARTFORD COURANT: Wednesday, February 19, 1975

Welfare Revising Mail-Check Rules

Welfare Commissioner Edward W. Maher said Tuesday he's revising the department's check-mailing procedures so recipients won't be left without checks on holiday weekends.

"I don't want any repeats of this weekend," he said.

Although mid-month checks were mailed as usual on Saturday, checks didn't arrive until Tuesday at the earliest because of the holiday weekend. Some families ran out of food and had to go to area agencies for help.

Maher said he'd originally hoped to change the mailing schedule so no checks would be sent on the weekend, but discovered this would be too complicated.

Instead, he's recommending that the usual schedule of mailing checks for arrival on the first and 16th of the month be changed only when recipients have to wait through a three-day weekend to receive their money.

Changing the mailing date means reprogramming the department computer or making arrangements with state banks to cash checks and sell food stamps early, he said.

Holiday Weekend Too Long Without Welfare Check, Food

By ELISSA PAPIRNO

Hartford area welfare recipients, who needed food for their families this weekend, had few places to turn for help, as most agencies aiding the poor were closed for the weekend and Washington's Birthday.

Apparently only Hartford's Revitalization Corps, 2424 Main St., made an emergency effort to feed some of the area's 10,000 state welfare recipients, who didn't receive their checks as expected Saturday.

State welfare offices were closed Monday and welfare officials could not be reached to explain why none of the state's 37,000 welfare recipients received their checks and food-stamp authorizations Saturday when they were due.

The delay caused a special hardship this weekend, said one East Hartford recipient, because children home on school vacation last week finished off the week's food supply in many families by Saturday.

Gov. Grasso Monday called on the welfare department to review its check-mailing procedures, so checks won't be delayed over a three-day weekend again.

She also asked the department to develop "stand-by" procedures if checks are delayed because of "circumstances beyond the control of the department."

Meanwhile, the Revitalization Corps delivered free food and arranged for credit in a local supermarket for about 30 families.

Although the corps' food supply was limited, Director Edward T. "Ned" Coll said no one was being turned away. "We'll get them food somehow," he said.

Coll said he met with Mrs. Grasso Monday and she contributed some of her own money to help the corps buy food. She also called on area residents and merchants to help out in the emergency.

Hartford Deputy Mayor Allyn A. Martin said he informally was able to arrange for about six Hartford families to receive city welfare assistance even though city welfare offices were closed Monday. He also directed a few families, which came to him for help, to the Salvation Army.

But some recipients, who called the Salvation Army on their own, heard unanswered phones or answering-service operators, who only approved food vouchers in some cases. The The Salvation regular social-service office was closed for the holiday.

The Horace Bushnell Church food pantry, another agency that distributes free food to the poor in emergencies, also was closed for the holiday, as was the Community Renewal Team, Hartford's largest antipoverty agency.

Meanwhile, Martin said he plans to meet with city officials today to see whether the city will establish emergency procedures to assist Hartford welfare recipients, who don't get their checks on time.